

April 25, 2230

BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL, MUMBAI

MISC. APPLICATION NO. 504 OF 2023 (Delay)
WITH
MISC. APPLICATION NO. 505 OF 2023 (Stay)
IN
APPEAL NO. AT0060000000 154609
IN
COMPLAINT NO.CC 006 0000000 78468

M/s. Unique Shanti Developers LLP }

Formerly known as Unique Shanti }
Developers Pvt. Ltd., }
Having address at Harsh Plaza, }
1st floor, Poonam Vihar Complex, }
Opp. Shanti Nagar Sector – 2, }
Mira Road (East), Thane – 401 107. }

... *Applicant*

- versus -

Mr. Rajesh Vijay Dubey }

Residing at, C-009, Sai Suggandh CHSL, }
S.P. Road, Vaishali Nagar, }
Dahisar (East), Mumbai – 400 068. }

... *Non-Applicant*

Mr. Manan Sharma, Advocate for Applicant.

Ms. Kanchan B. Gupta, Advocate for Non-Applicant.

CORAM: SHRI S. S. SHINDE, J., CHAIRPERSON &

DR. K. SHIVAJI, MEMBER (A)

DATE: 26th APRIL 2024

(THROUGH VIDEO CONFERENCE)

ORDER [PER : DR. K. SHIVAJI, MEMBER (A)]

By this application, Applicant has sought to condone delay of 233 days beyond the permissible period, in filing of the captioned appeal on 8th August 2023 under The Real Estate (Regulation and Development) Act of 2016

(hereinafter referred to as, "the Act"), seeking various reliefs including to set aside and quash the impugned order dated 17th October 2022, passed by learned Member, Maharashtra Real Estate Regulatory Authority (MahaRERA), wherein, Applicant was directed *inter alia* to comply with the original order dated 14.05.2019 passed by MahaRERA within 30 days failing which, Applicant Promoter shall be liable to pay penalty of Rs.1,000 per day for every day of the default till the actual compliance of the said order. The said penalty will get doubled per day after every month. The Order dated 14.05.2019 is the original order passed by MahaRERA, where in the Complaint No.CC 006 0000000 78468, filed by non applicant allottee was disposed of.

2. For the purpose of disposal of present application, it is not necessary to narrate facts of the case in detail. Suffice it to say that Applicant is Promoter, who is developing a project namely "Unique Homes" located at Building No. B-17, HDIL Layout, Sector-II, Virar (West) Dist. Thane. Non-Applicant is the purchaser of flat no. 302 in the said project. Non-applicant has filed the captioned complaint before MahaRERA seeking direction to applicant promoter *inter alia* for execution of the agreement for sale and possession of the subject flat on various grounds as set out in the complaint. Captioned complaint came to be disposed of by MahaRERA vide its order dated 14th May 2019. Aggrieved promoter challenged this order of 14th May 2019 by filing Appeal No. AT006000000031636, which came to be dismissed by this tribunal on 18th June 2021. After that, execution application No. 46 of 2021, filed by the non-applicant allottee in this tribunal was also disposed of on 1st July 2021, with the direction to the non-applicant allottee to present this execution application no. 46 of 2021 before MahaRERA on or before 15th July 2022 for disposal in accordance with the law and parties were directed to appear before MahaRERA. Accordingly, the execution application no. 46 of



2021 filed by the non-applicant allottee was presented before MahaRERA and the same came to be disposed of by MahaRERA 17th October 2022 (as ex-parte against applicant promoter) and this is the order of MahaRERA, which has been challenged by the applicant promoter by filing the captioned appeal no. AT006000000154609.

3. Heard learned counsel for parties *in extenso*. Perused record.
4. Captioned appeal has been filed beyond the statutory limitation period of 60 days and therefore, Applicant is seeking the condonation of delay of 233 days on various grounds as set out in the instant application. Learned counsel for Applicant made manifold submissions as follows: -
 - a. The impugned Order dated 17.10.2022 in non-execution of the original order passed by MahaRERA dated 14.05.2019, came to be passed by MahaRERA ex-parte without giving any intimation to Applicant by MahaRERA or by Non-applicant of any date of hearing and no intimation was received by Applicant on its registered e-mail ID. Applicant did not even receive the virtual link for online hearing on its registered email ID as the project registration number was wrongly mentioned by Non-applicant as P99000007717 instead of correct registration no.P99000009228, while filing the Complaint. Therefore, the impugned Order in non-execution is passed ex-parte without giving the Applicant an opportunity of being heard, which is contrary to the principle of natural justice.
 - b. The said delay of 233 days, caused in filing of the present Appeal was not deliberate. Rather, it was because, the Applicant was unaware of such impugned Order, which has been passed without any notice/ intimation.
 - c. In any event, Applicant is ready and willing to comply with the order dated 14.05.2019 passed by MahaRERA.



d. It is necessary in the interest of the justice that captioned Appeal be heard on merits failing which, grave harm, loss and prejudice will be caused to the Applicant if, the captioned Appeal is not heard on merits and delay is not condoned. On the other hand, no harm, loss, or prejudice will be caused to the non-applicant if, this application is allowed and delay is condoned because, the balance of convenience lies entirely in favour of Applicant/ promoter.

5. Per Contra, Non-Applicant opposed it by filing reply and pleaded to dismiss this application for condonation of delay with heavy costs by submitting as hereunder: -

- a. Non-applicant is an allottee and has purchased the subject flat in the said project of the Applicant Promoter bearing project registration no. P99000007717 and the Complaint was filed before MahaRERA for direction to applicant to execute agreement for sale and also to handover possession of the subject flat, which was allowed by MahaRERA, vide its order dated 14.05.2019 after hearing both the parties.
- b. Appeal No.AT006000000031616 filed by applicant promoter against this order of MahaRERA in this tribunal also came to be dismissed with cost of Rs.20,000/- on 18.06.2021 after hearing both the parties and this judgment of this Tribunal has not been challenged. Thereby, the Order dated 14.05.2019 of MahaRERA has attained finality, which was required to be complied with by the parties.
- c. Execution Application No.46/2021 filed before this Tribunal by non applicant on 29.06.2022 was disposed of after hearing both the parties, vide its Order dated 01.07.2022 with direction *inter alia* that Execution Application No.46/2021 be returned to the Applicant Allottee for presenting the same before MahaRERA on or before 15.07.2022 for disposal in accordance with the law.



- d. Applicant Promoter was very well aware of these facts of the execution proceeding before the Tribunal and had even filed their reply dated 07.09.2021 with copy to the non-applicant allottee.
- e. Pursuant to the Order of this Tribunal dated 01.07.2022, the said execution application was presented before MahaRERA on 13.07.2022 itself and had enclosed the copy of the notice dated 12.07.2022 of this Tribunal. As such, MahaRERA had also sent virtual link for hearing of the execution application to Applicant Promoter on its registered email ID (sales@uniqueshanti.com) on 14.10.2022 (page no.153 of the record) along with Webex meeting ID and meeting password for joint hearing/ meeting on 17.10.2022. Therefore, Applicant is levelling baseless allegations against the MahaRERA.
- f. Learned counsel further submits that the said email notice from MahaRERA has been received by both the parties but the Applicant Promoter herein, has deliberately, knowingly and dishonestly not appeared before MahaRERA in the execution proceeding, which is liable to be disposed of within 6 months in view of the judgment of the Hon'ble High Court of Punjab and Haryana dated 21.07.2022 and also in the light of the judgment of the Hon'ble Supreme Court of India in the matter of Rahul S. Shah Vs. Jitendra Gandhi and Ors. 2021 AIR (SC) 2161, which has laid down a period of six months for disposal of execution petition from the date of filing.
- g. In view of the dismissal of appeal filed by applicant against MahaRERA's order dated 14.05.2019, by this Tribunal on 18th June 2021, it has attained finality and stands in the field because this order has not been challenged further. Therefore, this is required to be complied with by the parties.
- h. As such, this tribunal passed an order dated 1st July 2022 on the execution application no.46/2021 on 01.07.2022 with direction to parties to appear before the MahaRERA after hearing both the parties. Therefore, the Applicant Promoter was fully aware of the execution proceeding and both



the parties were expected to appear before the MahaRERA. It is also to note that the Order passed by this Tribunal dated 01.07.2022 was not challenged by either of the parties and therefore, it was incumbent upon the Applicant Promoter to execute and comply with the judgment decree dated 14.05.2019 passed by MahaRERA.

- i. But Applicant Promoter has not complied with the Order dated 14.05.2019 despite passage of around five years even after participating and after being heard before passing of these orders of MahaRERA dated 14.05.2019 and also in the Appeal filed by none other than the Applicant Promoter itself.
- j. Applicant Promoter has intentionally not appeared before MahaRERA in the execution proceeding despite its knowledge and therefore, the execution application was disposed of by MahaRERA vide its Order dated 17.10.2022 and the said execution Order was also uploaded on the MahaRERA website on the login page of the Applicant as well as the non-applicant.
- k. Accordingly, urged that the captioned application for condonation of delay is not maintainable and is liable to be dismissed with cost.

6. From the rival submissions, a short point that arises for our determination is whether Applicant has explained with sufficient cause for condonation of said delay in filing instant appeal and to this our finding is in the negative for the reasons to follow: -

REASONS

7. Before we advert to the merits of the controversy let us consider the settled position of law on condonation of delay.
8. In case of Collector, Land Acquisition, Anantnag & Anr. Vs. Ms. Katiji and Others [(1987) 2SCC 107]; The Hon'ble Supreme Court in paragraph 3 reiterated the principles as follows: -



- a) *"Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
- b) *Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned, then highest that can happen is that a cause would be decided on merits after hearing the parties.*
- c) *"Every day's delay must be explained", does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense and pragmatic manner.*
- d) *When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred and other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
- e) *There is no presumption that delay is occasioned deliberately or on account of culpable negligence or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.*
- f) *It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so. It is needless to state that there should be liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, but at the same time 'sufficient cause' should be understood in proper spirit and be applied in proper perspective to the facts and situations of a particular case."*

9. In this connection, principles culled down by the Hon'ble Supreme Court in Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Ors. [(2013) 12 SCC 649] are as hereunder; -

- a. *Lack of bona fide imputable to a party seeking condonation of delay is significant and relevant fact; -*



- b. The concept of liberal approach has to encapsulate the concept of reasonableness and totally unfettered free play is not allowed; -*
 - c. The conduct, behavior and attitude of a party relating to its negligence. cannot be given a total go-bye in the name of liberal approach.*
 - d. If the explanation offered is concocted or the grounds urged in the applications are fanciful, the Courts should be vigilant not to expose the other side unnecessarily to face such litigation; -*
 - e. It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of the law of limitation.*
 - f. An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harboring the notion that the Courts are required to condone the delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system; -*
 - g. The increasing tendency to perceive the delay as a non-serious matter and hence lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal Parameters".*
- 10.** In the above background, we have to now examine whether grounds put forth by Applicant amount to sufficient cause within the provisions of Section 44 of the Act.
- 11.** Whereas every appeal under Section 44 (1) of the Act is statutorily required to be filed within a period of 60 days from the date on which, a copy of the order is received by the aggrieved person. However, learned counsel for applicant submits that the captioned appeal has been filed with delay of 233 days, beyond the prescribed statutory limitation period of 60 days under the Act. Therefore, has sought condonation of this delay by filing this application.
- 12.** It is not in dispute that order in the captioned complaint came to be passed by learned Member, MahaRERA on 14th May 2019, and the appeal filed by



applicant promoter against this order was also dismissed with cost of ₹ 20,000/- by this tribunal on 18th June 2021 as well as the execution application no. 46 of 2021 filed by non-applicant allottee therefore, was also disposed of by this tribunal on 01st July 2022 with direction to present the execution application before MahaRERA and parties were directed to appear before MahaRERA on or before 15th July 2022.

- 13.** It is also not in dispute that all the three orders namely the orders dated 14th May 2019, 18th June 2021 and 01st July 2022 have been passed after hearing both the parties including the applicant promoter after providing sufficient opportunities to both the parties. However, even after the direction to the parties by this tribunal, while disposing of the execution application no. 46 of 2021 vide its order dated 01st July 2022, applicant promoter has not appeared before MahaRERA to participate in the execution proceeding. As such applicant didn't appear before MahaRERA despite the intimation of the hearing by MahaRERA to applicant and also after informing the applicant to file their written submissions if any. Therefore, MahaRERA has passed the order dated 17th October 2022 as an *ex-parte* order against applicant promoter. This is more than evident with bare perusal of para nos. 2 and 4 (being reproduced below) of the impugned order dated 17th October 2022 itself, which has been challenged by the applicant promoter in the current appeal. These clearly reveal *inter alia* that "2.Both the parties have been issued prior intimation of this hearing and they were also informed to file their written submissions, if any. Accordingly, the complainant appeared for the hearing and made his submissions. However, despite the notice of hearing, none appeared for the Respondent (Applicant promoter herein)"
AND

"4. Respondent (applicant promoter herein), in the present case, despite notice has neither appeared nor filed any reply on record of MahaRERA



citing any justified reasons for non-compliance of the said order dated 14th May 2019 passed by MahaRERA....."

- 14.** However, applicant promoter is seeking the condonation of delay of 233 days in filing the captioned appeal filed against the order dated 17th October 2022 passed by MahaRERA primarily on the following three grounds: -
- a. Applicant came to know about the passing of the impugned order dated 17th October 2022 only after the receipt of the legal notice dated 23rd June 2023 from non-applicant allottee only on 01st July 2023 and the impugned order was passed *ex parte* without any intimation of the scheduled date of hearing before MahaRERA on account of following two reasons.
 - b. Applicant promoter did not receive a virtual link for online hearing on its registered email id.
 - c. And, as the project registration number was wrongly mentioned by non-applicant allottee as 'P99000007717' instead of correct registration no. 'P99000009228', while filing the complaint, no notice was served upon the applicant promoter. As such, applicant is ready and willing to comply with the original order dated 14th May 2019 passed by MahaRERA.
- 15.** However, perusal of record itself shows that contentions of Applicant are not supported by credible and cogent evidence on account of the followings; -
- a. Careful perusal of the record [page no 153] clearly shows that MahaRERA has issued email dated 14th October 2022 to all the parties including to applicant in the proceeding based on the execution application no. 46 of 2021 at applicant's own email id at "sales@uniqueshanti.com."
 - b. However, applicant promoter herein has contended that this is not the registered email id and therefore has not received the said email intimation for appearance in the said execution proceeding and thereby denied an opportunity of being heard before passing of this *ex parte* order.

However, careful perusal of the record further reveals that there has been a series of email exchanges, which have been taken place during this very time period itself at this very email id of the applicant promoter itself (vide page nos.59 – 68 of the appeal sets filed by none other than applicant promoter itself) between the applicant promoter and non-applicant allottee herein for execution of the agreement for sale itself quoting various RERA orders after passing of the order dated 01st July 2022 and also after the passing of the order dated 17th October 2022, which is under challenge herein. This shows that applicant promoter at one hand was responding for the emails received from the non-applicant at this specific email itself. Even then, it has chosen not to appear before MahaRERA and has now contended that applicant promoter could not appear before MahaRERA during this very time period because this is not its registered email.

- c. As such, learned counsel Mr. Manan Sharma appearing for applicant promoter, while making oral submissions for the captioned application for condonation of delay admitted that "sales@uniqueshanti.com" is an functional and working email id of the promoter itself of another division of the promoter company.
- d. It is also to note that the order of this Tribunal dated 01st July 2022 passed in the very same execution proceeding itself, is not an *ex parte* order and the same was passed after hearing the applicant promoter and parties, were directed by this tribunal to appear before MahaRERA for execution proceeding by sending this order to the parties including to the Mr. Suraj Naik, the advocate for applicant promoter at its email id "suraj1088@gmail.com" vide email of this Tribunal dated 01st July 2022. As such, the application promoter was being intimated from this tribunal to Mr. Suraj Naik continuously during the proceeding in the tribunal at its same email id.



- e. Applicant promoter has not placed on record any document showing that applicant has ever intimated any new email id to non-applicant.
- f. Applicant promoter has further contended that in the execution proceeding before MahaRERA, notice was not received because of the erroneous writing of correct project registration number as 'P99000007717' instead of correct registration no. 'P99000009228'. However, meticulous perusal of the record reveals that this was not raised in the original complaint proceeding. Moreover, the project registration number quoted therein is the same project registration number as 'P99000007717' and as such, even the flat number, subject building and location of the project land are exactly same as mentioned in the original complaint without any change either in the impugned order of MahaRERA, or in this Tribunal. Further perusal shows that even the payment receipts issued by none other than the applicant promoter itself, has placed on record and has quoted *inter alia* the same flat no. 302, wing – B, building no. B/17, Sector 2 in Unique Homes at HDIL layout, Virar West, District - Thane without any change.
- g. Learned counsel for the applicant promoter himself admitted during the argument that this impugned order dated 17th October 2022 was uploaded on the RERA website and the only grievance he has that this order was not uploaded in promoter's website. Additionally, promoters are expected to keep themselves updated about the developments and changes on the project after registration by visiting the MahaRERA website frequently. All the payment receipts have exactly the same flat nos. and the location of the project land, which have been issued by none other than the applicant promoter itself. Even the legal notice dated 27th November 2018 issued by applicant for alleged cancellation of the booking of the said flat also contains exactly the same flat number and project land details as "Unique Homes".



16. In view of above, we are of the considered view that despite clear direction in order dated 01st July 2022 of this Tribunal for the parties to appear before MahaRERA on or before 15th July 2022 and even after receipt of email notice dated 14th October 2022 from MahaRERA containing Webex link to appear for the meeting at the same email id, which was being used for email exchanges between the applicant promoter and the non-applicant allottee during the very same time period on the very same subject matter and even after quoting the very same flat number as well as project land details in the correspondences, applicant promoter has intentionally and deliberately chosen not to appear before MahaRERA for the execution proceeding despite having statutory liability to comply with and satisfy the original order of MahaRERA dated 14th May 2019. Therefore, we are of the view that the grounds raised by the applicant promoter in the captioned application for condonation of delay of enormous amount of 233 days in filing of the appeal, are not sustainable in the eyes of law. It is more particularly because it the applicant promoter, who has intentionally and deliberately chosen not to appear before the execution proceeding despite having knowledge of it by citing the very same grounds for which, the applicant promoter itself is responsible for. Therefore, a party in breach cannot claim benefits of its own fault more particularly because it is a settled position of law that he, who prevents a thing from being done, shall not avail himself of the non-performance, he has occasioned. As has been clarified by the Hon'ble Supreme Court in the case of ***Kusheshwar Prasad Singh Vs. State of Bihar and Ors. [Supreme Court] Civil Appeal No. 7351 of 2000***: "*It is sound principle that he, who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrongdoer ought not to be permitted to make a profit out of his own wrong."*

17. In addition, the *conduct, behavior and attitude of a party relating to its negligence etc., cannot be given a total go-bye in the name of liberal approach*. It is more than clear that applicant despite being a promoter is with malafide intention, is delaying the compliance of the judgment decree of the original order dated 14th May 2019 of MahaRERA despite having statutory liabilities of its compliance even after the passage of such a long time.
18. Therefore, in the present case applicant has failed to produce even a single concrete and tangible supporting evidence on record demonstrating timely action, no step is seen taken by Applicant for filing the appeal within time after passing of the order. All these, indicate that Applicant has *prima facie* not taken any visible, tangible and demonstrable action. Therefore, Applicant was not vigilant enough about its rights and law will not benefit such non-vigilant litigants for delay.
19. It is true that length of delay is not important, but acceptability of explanation is important criteria as primary function of Tribunal is to adjudicate dispute between the parties and to advance substantial justice. The Hon'ble Supreme Court summarized the law on the issue in Basawaraj and Anr vs. Special Land Acquisition Officer [(2013) 14 SSC 81]. In para 15 the Hon'ble Supreme Court held thus -
- "15. The law on the issue can be summarized to the effect that where a case has been presented in the court beyond limitation, the Applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case or found to have not acted diligently or remained inactive, there cannot be justified grounds*

to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamount to showing utter disregard to the legislature”.

- 20.** In the instant case, Applicant has made only vague and unsubstantiated submissions. Whereas non-applicant has demonstrated and effectively controverted all the contentions raised by Applicant. Despite providing enough opportunities, Applicant has failed even remotely to show any meaningful and cogent reason in support of the condonation of delay, leave aside the much-needed sufficient cause, which is required for condonation of delay.
- 21.** Further, it is also significant to note that Applicant is not a person of ordinary prudence. It is a Promoter company, managed by educated functionaries, who know their business activities very well in the real estate markets. Keeping in view of the proposition of law laid down by the Hon'ble Supreme Court relating to condonation of delay as above and having regard to the totality of facts and circumstances of this case as discussed above, Applicant is found to be casual and non-serious in preferring the appeal against the impugned order. Therefore, in the absence of cogent reasons to condone enormous delay of 233 days in filing of the captioned appeal and in order to avoid injustice to non-applicant, we are of considered view that the application for condonation of delay for 233 days is devoid of merits and does




not deserve to be allowed. Accordingly, solitary point for determination is answered in the negative and we proceed to pass the following order: -

ORDER

- (a) Captioned application with prayer for condonation of delay stands rejected.
- (b) Misc. Application No. 504 of 2023 for condonation of delay stands dismissed and disposed of.
- (c) In view of dismissal of Misc. Application for condonation of delay, pending captioned Appeal No. AT- 154609 would not survive, consequently stands disposed of.
- (d) In view of disposal of appeal no. 154609 as above, other pending Misc. Application/s will not survive. Hence, stand disposed of.
- (e) Applicant promoter to pay cost of Rs. 25, 000/- towards legal expenses of non-applicant, directly to his account within three weeks from the date of uploading of this order.
- (f) In view of the provisions of Section 44(4) of the Act of 2016, copies of the order shall be sent to the parties and to MahaRERA.


(DR. K. SHIVAJI)


(S.S. SHINDE, J.)